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Response to preamble questions on "Commercial Availability" from 7 CFR Part 205

In order to preserve the integrity of organic products, it is extremely important in products labeled "organic" to demonstrate that a particular ingredient is not commercially available as certified organic, before non-organic ingredients are used. "Commercially available" was recently defined by the USDA, in the Final Rule, as:

...the ability to obtain a production input in an appropriate form, quality, or quantity to fulfill an essential function in a system of organic production or handling, as determined by the certifying agent in the course of reviewing the organic plan.

This is excellent wording and succinctly captures the spirit and steps necessary to assure the consumer that the manufacture is practicing due diligence in sourcing and obtaining the best ingredients possible for their certified organic products. The certification agency and the certified entity (with their the organic systems plan) should work together to determine compliance to organic standards.

In a discussion of the "factors, such as quantity, quality, consistency of supply, and expense of different sources of an ingredient," the number one consideration must be quality. Horizon Organic is striving to give the public the highest quality, best tasting product we can. We don't want organic products to be of lesser quality as compared to conventional products. It is imperative that we not be forced to use an ingredient that is not up to our quality standards. Furthermore, a third party should not dictate these quality standards.

The second consideration is supply source. There needs to be more than one certified organic source of a particular product. It is necessary for a buyer to have choices of comparable quality and functionality. If there is only one certified organic source for a particular item, it is not enough that it is organic, unless the quality/cost is acceptable and reasonable. There needs to be a competitive situation for each organic ingredient. Reliability of the supplier in regards to food safety issues should also be considered.

We well realize that economics are not supposed to play a factor in organic, yet we need to be sustainable. The cost of the organic ingredient must be reasonable or we will not be able to put the finished certified organic product on the market. The goal is to build the organic market; if it stays stagnant (or worse yet, shrinks) there will not be an outlet for the new producers who wish to convert their land to organic production methods.

If the definition of commercial availability becomes "if it's available, you use it", the market will not be well served. A premium for organic is necessary and right. But for a supplier to gouge the market, because they know they are the only one with a product and we're all required to use it regardless of quality, functionality, or cost is wrong.

Right now we are facing a short supply for organic vanilla - we would not consider any organic vanilla that might be available if the quality is less than our current standard, if the proposed supplier is not reputable, or if their product poses a food safety risk.

To sufficiently demonstrate that a handler has taken appropriate and adequate measures to ascertain whether an ingredient is commercially available as organic, the certified party must document their search for the item. A due diligence search for the product as certified organic must be recorded, kept on file, being an ongoing communication with the certifying agency, and shown to the inspector. A "due diligence search" document will include copies of written requests and responses from companies, or dates and notes from phone conversations, and requests to certification organizations and trade organizations for the products needed.

AMS can ensure the greatest possible degree of consistency in the application of the commercial availability standard among multiple certifying agents by simplifying and explaining the processes necessary to prove due diligence.

Without a doubt there could be potentially adverse effects of a commercial availability standard. I believe we have outlined them above. Adverse effects include being forced to buy low quality, being forced to pay a king's ransom due to a sole supplier, being forced

to buy a product that may not be up to our food safety standards, etc. This could impede a processor's ability to keep a high quality, consistent product on the shelves, damage the company's reputation, and negatively impact the consumer as well as the reputation of the organic industry.

In regards to economic and administrative burdens imposed by the commercial availability standards found in our existing organic certification program, Horizon Organic is certified by QAI (Quality Assurance International). Thus far we have provided due diligence information. QAI, with its wide-spreading, international reach, has an excellent handle on product availability around the world. These two factors have served to create a reasonable and workable situation.

Thank you very much for taking the time to read our comments. If you have any questions, or require clarification, please do not hesitate to contact us.